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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,158	11/13/2001	Earl J. Votolato	SPELL-004C	8649
34284	7590	04/25/2005	EXAMINER	
ROBERT D. FISH RUTAN & TUCKER LLP 611 ANTON BLVD 14TH FLOOR COSTA MESA, CA 92626-1931			PAYER, HWEI SIU CHOU	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 04/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/010,158	Applicant(s) VOTOLATO, EARL J.	
	Examiner Hwei-Siu C. Payer	Art Unit 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 September 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 4-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **Detailed Action**

The amendment filed on 9-7-2004 has been entered.

### **Objection to the Abstract**

The abstract of the disclosure is objected to because the abstract exceeds 150 words in text. Correction is required. See MPEP § 608.01(b).

### **Claims Rejection - 35 U.S.C. 112, first paragraph**

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1 and 4-7 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

(1) In claim 1, "the first and second arms are each significantly wider than the bridge" has no support from the original specification.

(2) Claim 6 has no support from the original specification.

(3) Claim 7 has no support from the specification as originally filed. As disclosed at pages 2 and 4 of the specification, it is the outer surfaces 14,20 of the first and second arms 12,18 that are concavely contoured. As shown in the drawings, the entirety of the first and second arms 12,18 does not extend concavely from the bridge 26 rather that the inner surfaces 16,22 of the first and second arms 12,18 are convexly contoured.

#### **Claims Rejection - 35 U.S.C. 103(a)**

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 4, 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horning, Jr. (U.S. Patent No. 5,007,171) in view of Pankonin (U.S. Patent No. 2,033,050) and Hanna (U.S. Patent No. 5,357,679).

Horning, Jr. discloses a bag slitting apparatus (see Fig.3) for opening a sealed bag (11), comprising first and second arms (13,14) forming a single piece of plastic material (see column 1, lines 64-66) that are connected only through a pivoting bridge at one end; the first arm (13) carrying a cutting surface (20) on an interior surface (15) facing the second arm (14); and the second arm (14) carrying a receiving surface (16) that cooperates with the cutting surface (20) to make a cut through a portion of the bag

(11) when the first and second arms (13,14) are opposed about the bag (11) substantially as claimed except the exterior surfaces and the entirety of the first and second arms (13,14) are not concave, and the first and second arms (13,14) are not wider than the bridge.

Pankonin shows a hand-held tool (Fig.5) comprising concaved first and second arms (20,21) having concave exterior surfaces.

It would have been obvious to one skilled in the art to modify Horning Jr. by making the exterior surfaces and the entirety of the first and second arms (13,14) concaved to enhance manual grasping of the first and second arms as taught by Pankonin.

Hanna shows a bag opening device comprising first and second arms (12,14) connected through a bridge (20), wherein the width of the bridge (20) is less than that of the arms (12,14).

It would have been obvious to one skilled in the art to further modify Hanna by making the bridge narrower than the arms (i.e. the arms are wider than the bridge) to allow for more convenient opening and closing of the arms (13,14) as taught by Hanna.

3. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Horning, Jr. (U.S. Patent No. 5,007,171), Pankonin (U.S. Patent No. 2,033,050) and Hanna (U.S. Patent No. 5,357,679) as applied to claim 4 above, and further in view of Braatz (U.S. Patent No. 5,103,562).

The bag slitting apparatus of Horning, Jr. as modified above shows all the claimed structure except it is silent about the material the blade (20) is made of.

Braatz discloses a bag opener comprising a metal blade (see column 2, lines 25-30).

It would have been obvious to one skilled in the art to further modify Horning, Jr. by making the blade (20) out of metal to resist wear as taught by Braatz.

#### **Remarks**

Applicant's arguments with respect to claims 1 and 4-7 have been considered but are moot in view of the new ground(s) of rejection.

#### **Action Made Final**

Applicant's submission of the requirements for the joint research agreement prior art exclusion under 35 U.S.C. 103(c) on 9-7-2004 prompted the new ground(s) of rejection under 37 CFR 1.109(b) presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.02(l)(3). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

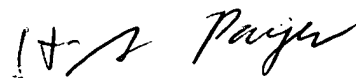
shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

#### **Point of Contact**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hwei-Siu C. Payer whose telephone number is 571-272-4511. The examiner can normally be reached on Monday through Friday, 7:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 571-272-4514. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for official communications and 571-273-4511 for proposed amendments.

H Payer  
April 20, 2005



**Hwei-Siu Payer**  
**Primary Examiner**